IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 15060 of 2007(P)

PETITIONER:

MS.KALINGA: KALLAI ROAD,
CALICUT BY MANAGING PARTNER KRISHNAN KUTTY.

BY ADV. SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS:

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1. ASST.COMMISSIONER (KGST), SPECIAL CIRCLE II, KOZHIKODE.

2. DEPUTY COMMISSIONER (APPEALS), DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE.

3. DEPUTY TAHSILDAR (RR), CALICUT.

BY ADV. SHRI.MATHEW GEORGE, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 15060 of 2007 P

Dated, this the 24th day of May, 2007

J U D G M E N T

Heard the learned counsel for the petitioner and the learned Government Pleader. Petitioner is challenging Ext.P9 order whereunder the appellate authority has directed payment of 50% of the demand as a condition for stay of recovery of sale tax arrears during pendency of appeal filed against the KGST – CST assessments for the year 2002-2003. I have gone through the assessment orders and as also the impugned order. If this Court has to modify stay order, merits of the case have to be gone into which if done, the appeal itself would become infructuous. Learned Counsel submitted that rectification application filed is supported by valid reasons and that is not disposed of. I find from the assessment orders that transactions are routed through Mahe, which is a notorious practice for tax evasion. In any case, having regard to the fact that demand is above Rs. 25 lakhs, out of which Rs. 5.5 lakhs is interest, Ext.P9 is modified reducing the amount to be paid for stay to Rs. 9 lakhs, 50% of which will be paid within two weeks from now and balance will be within two weeks thereafter.

Recovery proceedings will be kept in abeyance for payment as above and if payment is not made as above, recovery for the entire demand will be continued immediately on default. The appellate authority and the 1st respondent are directed to take up the appeal and rectification application after payment as above and dispose of the same after hearing the petitioner within two months from the date of making payment as above.

This WP(C) is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg